IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

CRP.No. 1014 of 2006()

SM.335/1978 of TALUK LAND BOARD, CHITTUR

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REVN. PETITIONER:Declarant/legal heir of deceased declarant:

CHENTHAMARAKSHAN, S/O.PAZHANAN,
MOOLATHARA, PLACHIMADA, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.H.BADARUDDIN

RESPONDENTS:State/ 4 to 8 legal heirs of deceased declarant:

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1. THE TALUK LAND BOARD,
CHITTUR, REPRESENTED BY ITS CHAIRMAN.

2. THE TAHASILDAR, CHITTUR.

3. THE VILLAGE OFFICER,
MOOLATHARA VILLAGE.

4. KALLIANY, W/O.LATE PAZHANAN,
PLACHIMADA, MOOLATHARA, CHITTUR TALUK,
PALAKKAD.

5. NARAYANAN, S/O.LATE PAZHANAN,
PLACHIMADA, MOOLATHARA, CHITTUR TALUK,
PALAKKAD.

6. GANGADHARAN, S/O.LATE PAZHANAN,
PLACHIMADA, MOOLATHARA, CHITTUR TALUK,
PALAKKAD.

7. SANTHAKUMARI, D/O.LATE PAZHANAN,
PLACHIMADA, MOOLATHARA, CHITTUR TALUK,
PALAKKAD.

8. INDIRA, D/O.LATE PAZHANAN,
PLACHIMADA, MOOLATHARA, CHITTUR TALUK,
PALAKKAD.

BY ADV. SRI.C.A.JOSEPH FOR R4 TO R8
GOVERNMENT PLEADER SMT. R.BINDU FOR R1 TO R3

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON IA 3605/06 IN CRP 1014/06

DISMISSED.

SD/- M.N.KRISHNAN,JUDGE.

19/11/2007

M.N.Krishnan, J.

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C.R.P.No.1014 of 2006

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Dated this the 19th day of November, 2007.

ORDER

This revision petition is preferred against the order of the Taluk Land Board, Chittur in S.M.No.335 of 1978. The court directed the legal representatives of the original declarant to surrender 1 acre and 91.5 cents of land comprised in Sy.No.1061 of Moolathara Village, Chittur Taluk. It is submitted by the learned counsel for the revision petitioner that he was not given an opportunity to represent his case properly and further the Taluk Land Board has erred in applying the decisions rendered by the court.

2. A reference to point No.2 discussed in page 4 of the order of the Taluk Land Board would reveal that even as per the authorised officer's report, two applicants, namely Narayanan and Gangadharan were majors as on 1.1.1970. In paragraph 5 the Taluk Land Board has stated that the High Court was compelled to consider the partition deed in favour of the sons as gift deed

for exemption under Section 84(A) of Kerala Land Reforms Act. The decision of this Court is to the effect that when transactions by way of gift, etc. are exempted and if there are grounds the court has to construe even the partition deed as a gift deed. Two aspects which may loom large in consideration of these materials are that if it is found to be a joint family property or an ancestral property and if the children were born prior to 1.12.1976 as per the Hindu Law, they are entitled to the right by birth. In such case, one has to effect a deemed partition as on 1.1.1970 and exclude the property of major people from computing the ceiling area of the declarant.

3. So far as the Kerala Land Reforms Act is concerned, family includes husband, wife and their unmarried minor children or such of them as are exist. So, if there are major sons and they are entitled to shares that has to be necessarily deleted from computing the ceiling area of the parents. Another situation that may arise is that when it is not proved as joint family property or ancestral property and still a partition deed is executed between the father and children. In such a case since there is no right by birth, the partition effected by transferring

the property in favour of the children would amount to a gift. So in such a situation when the court directs that it has to be treated as a gift and exclude it in the light of the amendment to the Kerala Land Reforms Act, which is valid up to 5.11.1974 that has to be done. What the Taluk Land Board has done precisely in this case is that it has treated it as a gift deed, but instead of finding with regard to entitlement of Narayanan and Gangadharan over the entire property just had taken into consideration the schedule allotted to them and deducted 1/4th from the said schedule which is absolutely incorrect. The share has to be worked out on the total extent of the property and if a person is entitled to get more than 6 acres or 7.5 acres as on 1.1.1970, the Taluk Land Board may be entitled to decide against him personally. But there is no such case in this matter.

4. Therefore, the order under challenge is set aside and the Taluk Land Board is directed to reconsider the matter afresh after affording sufficient opportunity to the legal representatives of the deceased defendant to put forward their contentions and dispose of the matter in accordance with law. The Taluk Land Board is directed to issue registered notices with

acknowledgment due to the claimants and fix a date for appearance and dispose it of in accordance with law.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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